

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

**Agenda ID #5173**

December 13, 2005

TO: PARTIES INTERESTED IN RESOLUTION ALJ-189

This draft resolution will be on the agenda at the **January 12, 2006** Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

Any person may file comments on the draft resolution. Opening comments shall be filed and served no later than January 5, 2006. Service is required on all parties shown on the attached service list.

Finally, comments must be served on Assistant Chief Administrative Law Judge Victor Ryerson and, for that purpose, I suggest hand delivery, overnight mail or other expeditious method of service.

/s/ ANGELA K. MINKIN by JSW
Angela K. Minkin
Chief Administrative Law Judge

ALM:h12

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-189
Administrative Law Judge Division
January 12, 2006

R E S O L U T I O N

RESOLUTION ALJ-189 in the Matter of the Appeal of Citation
FC-015 Affirming the Citation Pursuant to Resolution ALJ-187.

Maria L. Bondonno, attorney at law, Legal Division, for the Consumer Protection and Safety Division of the California Public Utilities Commission.

George Rizk, in pro per, for respondents George Rizk, Joseph Eid, and Hashem Ahmad, doing business as GGG Limousine.

Findings of Fact

1. GGG Limousine (respondent) is a partnership owned by George Rizk, Joseph Eid and Hashem Ahmad. On April 22, 2004, the Public Utilities Commission of the State of California (Commission) granted Class P Charter-Party Permit number TCP017323-P to respondent.

2. On June 8, 2005, the Consumer Protection and Safety Division of the Commission (CPSD) conducted an inspection of limousines at San Francisco International Airport (SFO). During the course of the inspection Supervising Investigator Suong Le interviewed Akeel Jassim Abood, who was driving a vehicle bearing license plate number "GRAND 22" and Vehicle Identification Number 619198 (GRAND 22). Abood identified himself as an employee of respondent, the registered owner of GRAND 22. The Commission's records did not show that Abood was one of respondent's drivers, and CPSD conducted a further investigation.

Although Abood and Rizk subsequently claimed that he drove GRAND 22 to SFO that day only to drop off a friend, this contention is unpersuasive. Abood's initial disclosure that he was driving the car in the capacity of a GGG Limousine employee carries considerably more weight than his subsequent

explanation that he was taking an unnamed friend to the airport. A letter Abood wrote on respondent's behalf on September 8, 2005 fails to provide any verifiable support for Rizk's story, such as the identity of Abood's car, where it was being repaired, or his friend's name.

3. On October 6, 2005, the Commission served Citation number FC-015 on respondent in accordance with Resolution ALJ-187. Respondent served a timely Notice of Appeal on CPSD. Administrative Law Judge Victor D. Ryerson heard the matter on November 10, 2005, in San Francisco, and the hearing was concluded, and the matter was submitted, on that date.

4. On September 15, 2003, respondent submitted to the Commission a Workers' Compensation Declaration Form (TL706-K) that states that the respondent did not at that time have any employees, and representing that if the company hired employees in the future, it would submit an amended Workers' Compensation Declaration Form to the Commission and contact its insurance company at once to have the required certificate of coverage mailed to the Commission. The form was certified under penalty of perjury by each of respondent's partners. Respondent has not submitted an amended declaration to the Commission.

5. On February 15, 2005, respondent requested that Abood be added as a driver to its National Casualty Company liability insurance policy, number CAOL006116, which was effective from April 20, 2004, until April 20, 2005, and Abood was covered pursuant to respondent's request. Abood is also shown as a driver under respondent's subsequent policy, number CAOL007150, which is effective from April 20, 2005, to April 20, 2006. This supports the inference that he was respondent's employee. Obtaining this additional coverage increased the company's insurance cost. Although it is possible that respondent did this as a precaution in contemplation of hiring Abood as a driver in the future, it is not likely.

6. Abood is not enrolled as a driver for respondent in the California Department of Motor Vehicles (DMV) Pull Notice Program.

7. Abood is not enrolled as a driver for respondent in the Controlled Substance and Alcohol Testing Certification Program, and respondent did not conduct pre-employment testing of Abood as part of that program.

8. On February 25, 2005, the Commission received a Notice of Cancellation of Bodily Injury Liability and Property Damage Liability Insurance from National Casualty Company, which notified the Commission of the cancellation of policy number CAOL06116 [sic] as of April 20, 2005. In response to the notice, on March 21, 2005, the Commission sent respondent a Notice of Impending Suspension notifying respondent that its permit would be suspended, effective April 20, if respondent did not file evidence of adequate insurance coverage by that date. On April 20, 2005, the Commission issued an order suspending respondent's permit because the Commission had not received the required evidence of coverage, and sent it to respondent by First Class Mail. Rizk contends that respondent did not receive the Commission's suspension order, and argues that that all such orders should be sent by certified mail to ensure receipt. Respondent's contention is not credible, nor its argument compelling. Respondent received all of the other communications from the Commission that were mailed to the same address, and there is no special circumstance to suggest that respondent did not receive the suspension order as well.

On April 26, 2005, the Commission received a certificate of insurance under National Casualty Company policy number CAOL007150 on behalf of respondent. On April 29, 2005, the Commission issued a Notice of Reinstatement of respondent's operating authority.

9. Trip records for respondent show that respondent operated four days during the period that its permit was suspended in April 2005. During that period respondent's limousines made 28 trips to SFO.

10. Between the months of April and August 2005, respondent did not have a permit from the Port of Oakland to operate at Oakland International Airport (OAK). Trip records show that its vehicles with license numbers GRAND 22 and GRAND 24 operated at OAK numerous times during that period. The Port's records show that GRAND 22 and GRAND 24 belonged to Grand Sedan Service LLC (Grand) at this time, and were operated at OAK under a permit that had been granted to that company. George Rizk testified that respondent had purchased GRAND 22 and GRAND 24 from Grand.

11. Rizk testified that Abood was not employed by respondent, and that only he and his two partners were drivers for the company, because the company could not afford to employ any drivers. He explained that Abood drove GRAND 22 to SFO on June 8, 2005, because Abood's car was being repaired, and respondent allowed Abood to use the car to take a friend to the airport. When he

was interviewed by the CPSD investigator, Rizk admitted that he knew he should not have allowed Abood to use the car.

Rizk also explained that he had added coverage for Abood under respondent's liability insurance policy in anticipation that respondent would hire Abood, but that respondent never did so. Rizk claims that he attempted to remove Abood from respondent's current policy, but was unsuccessful in doing so because it was contrary to his insurance broker's normal practice.

12. Abood did not testify at the hearing, but provided a brief letter for the record. His letter denies that he has ever been employed by respondent, as he has his own business and holds his own permit, number TCP 13393-P. It also provides the explanation that he used respondent's car to drop a friend at the airport on June 8 because his car was in the shop.

Conclusions of Law

1. Public Utilities Code Section 5378.1, subdivision (a), requires every charter-party carrier to file evidence of workers' compensation coverage for its employees, unless it has certified that it does not employ any person in any manner so as to become subject to California's workers' compensation law. Cause exists to cite respondent for violating this statutory requirement by reason of the facts set forth in Findings of Fact numbers 1, 2, 4, 5, 11 and 12. The evidence demonstrates that it was more likely than not that Akeel Jassim Abood was a driver for, and therefore an employee of, respondent, and that respondent should have provided evidence of his workers' compensation coverage.

2. Public Utilities Code Section 5379 prohibits a charter-party carrier of passengers from conducting any operations as a carrier during the period of suspension of its permit. Cause exists for citing respondent for violating this statutory prohibition by reason of the facts set forth in Findings of Fact numbers 1, 8 and 9. There is clear evidence that respondent operated for four days in April 2005 while its permit was suspended.

3. Public Utilities Code Section 5381, Commission General Order (GO) 157-D, part 5.02, and Vehicle Code Section 1808.1 require a charter-party carrier to enroll every driver in the DMV Pull Notice System. Cause exists to cite respondent for violating this requirement by reason of the facts set forth in Findings of Fact 1, 2 and 6, and Conclusion of Law 1.

4. Public Utilities Code Section 5347, subdivision (a)(2), and Commission GO 157-D, part 10, require a charter-party carrier to enroll every driver, and conduct

pre-employment testing of every driver, as part of a Controlled Substance and Alcohol Testing Certification Program. Cause exists to cite respondent for violating these requirements by reason of the facts set forth in Findings of Fact 1, 2 and 7, and Conclusion of Law 1.

5. Public Utilities Code Section 5381 and Commission GO 157-D, part 3.02, prohibit a charter-party carrier from conducting operations on the property of an airport without authorization. Cause exists to cite respondent for violating this requirement by reason of the facts set forth in Findings of Fact 1, 2, and 10.

6. The violations set forth in Conclusions of Law 1 through 6 violate conditions 3, 4 and 7 of permit number TCP017323-P.

7. In mitigation of the statutory and regulatory violations set forth above, there is no evidence that respondent's license has previously been disciplined. Additionally, Item 5 of Citation FC-015 is based upon two counts of violating the prohibition against operating on airport property without approval, i.e., violation of this prohibition at two airports. CPSD only made a showing that respondent violated this rule at OAK. In view of these circumstances, the fine should be reduced from \$1,500.00 to \$1,300.00.

Comments

This Resolution was issued for public review and comment in accordance with Public Utilities Code Section 311, subdivision (g). _____ comments were received.

IT IS THEREFORE RESOLVED that:

1. Citation FC-015 is affirmed except as provided herein.
2. Respondents George Rizk, Joseph Eid and Hashem Ahmad, dba GGG Limousine, shall pay a fine of \$1,300.00 pursuant to Public Utilities Code Section 5378 within 30 days of the effective date of this order. Payment shall be made by check or money order payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment the fine shall be deposited in the State Treasury to the credit of the General Fund and this citation shall become final.
3. If respondent fails to pay the fine as provided herein, the Commission's Consumer Protection and Safety Division shall immediately revoke TCP017323-P, and may take any other action provided by law to recover the

unpaid fine and ensure compliance with applicable statutes and Commission orders.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on _____, 2006, by approval of the following Commissioners:

STEVE LARSON
Executive Director

**Updated Service List
CPSD Citation Number FC-015**

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